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# "MANKIND"







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“MANKIND”



**SENIOR & SENIOR**  
ATTORNEYS AT LAW  
JUDGE BUILDING  
SALT LAKE CITY

To the Stockholders of  
The North Point Consolidated Irrigation Co.

November 17, 1923.

Gentlemen:

Recently there was levied an assessment of fifty cents per share (designated assessment No. 76) against the outstanding stock of the North Point Consolidated Irrigation Company, to wit:

John H. Bailey .....	275.46 $\frac{1}{2}$	Eliz. M. Adams .....	65.
Sophia Bailey .....	119.50	Bothwell, Glenn R.....	175.
Alma Baldwin .....	16.75	Elnora Dalrymple .....	4.
C. W. Brown .....	1.	J. L. & S. W. Dobson.....	25.
Jacob Dorr .....	140.	J. Arch Ellis .....	10.
U. S. Epperson .....	6,262.75	J. C. Hansen .....	50.
B. S. Hinckley .....	200.	Thos. E. Jeremy .....	59.1
A. A. Hinckley .....	1	Ethan J. Jeremy .....	558.25
Dora T. Jachetta .....	10.	John W. Kilgrow .....	40.
John L. Lawson .....	40.93 $\frac{3}{4}$	H. A. Langford .....	6.
A. F. Lawson.....	40.50	Mike Marell .....	5.
Meyer Realty Co. ....	112.	Henry Nebeker .....	37.
C. W. Nibley .....	4.	Dan O'Leary .....	16.
Ed H. Rife, Estate....	5.25	Rudy, F. H. ....	26.
D. J. Satterfield .....	75.	Samuel A. Thomas ....	40.
Louisa S. Yeck .....	2.	Gillmor Bros. ....	10.
W. S. Partridge .....	2.5	Utah Reclamation Co....	614.50
Adrian Dalebout .....	5.	Henry Cohn Estate .....	350.
	<u>7,313.65</u>		<u>2,090.85</u>
			<u>7,313.65</u>
		Total Outstanding ....	9,404.50

Exhibit "A," comprising pages 16, 17, and 18 hereof, will serve to explain upon what the Company bases its claimed right to the use of water from the Jordan River via surplus canal.

If you are not already advised, it may be of interest to you to know that there is now pending in the District Court of Salt Lake County a suit against the Company whereby A. F. Lawson on behalf of himself, J. L. Lawson, J. W. Kilgrow, J. L. Dobson, and S. A. Thomas seek to recover from the company by way of damages the sum of \$26,409.18, with interest. These people claim a right to recover judgment against the company for alleged failure on its part to supply them with water for irrigation during



the past several years in the way and at the times they claim they were entitled to have the water delivered to them by the company because of their respective stock holdings.

The respective claims of damage according to the complaint are:

A. F. Lawson, including John L. Lawson . . .	\$ 8,128.18
J. W. Kilgrow . . . . .	631.00
J. L. Dobson . . . . .	5,650.00
S. A. Thomas . . . . .	12,000.00
Total . . . . .	\$26,409.18

It seems to the writer it necessarily follows that in order to properly defend this action against the company it will require considerable expenditure of money by way of expert engineers to take measurements and run levels in order to qualify them to testify understandingly when the case comes to trial, lawyers' fees, witness fees, etc.

In the complaint we find it stated that the alleged damage to the respective plaintiffs occurred during five years, as follows, to wit:

A. F. LAWSON AND JOHN L. LAWSON		
In the year 1918 the sum of . . .	\$ 1,235.65	(See Exhibit "E" page 21 hereof)
In the year 1919 the sum of . . .	5,008.39	(See Exhibit "D" page 21 hereof)
In the year 1920 the sum of . . .	1,024.50	
In the year 1921 the sum of . . .	229.00	(See Exhibit "C" page 21 hereof)
In the year 1922 the sum of . . .	630.64	
	\$ 8,128.18	\$8 128.18
J. W. KILGROW		
In the year 1919 . . . . .	\$ 240.00	
In the year 1920 . . . . .	240.00	
In the year 1922 . . . . .	151.00	
	\$ 631.00	\$ 631.00
J. L. DOBSON		
In the year 1918 . . . . .	\$ 750.00	
In the year 1919 . . . . .	3,500.00	
In the year 1920 . . . . .	800.00	
In the year 1921 . . . . .	300.00	
In the year 1922 . . . . .	300.00	
	\$ 5,650.00	\$ 5,650.00
S. A. THOMAS		
In the year 1918 . . . . .	\$ 2,000.00	
In the year 1919 . . . . .	6,000.00	(See Exhibit "D" page 21 hereof)
In the year 1920 . . . . .	2,000.00	
In the year 1921 . . . . .	1,000.00	
In the year 1922 . . . . .	1,000.00	
	\$12,000.00	12,000.00
Total . . . . .	\$26,409.18	



## THEIR COMPLAINT

In the complaint filed in the District Court by the Lawsons and associates above named, it is alleged, to wit:

"4. That the North Point Canal, together with the Northeast branch thereof controlled by the defendant, which the plaintiff and John L. Lawson secure their water, was constructed many years ago and as originally constructed was not dug down to the level of or into the sand strata, which was lying under said canal. The Northeast branch thereof, or the furthestmost part of it, was built with high banks and formed a reservoir in order to rise the line of the water as high as possible. The diverting ditch of the plaintiff is taken from the upper part of said canal or reservoir in order that the water would flow on to the Lawson land. This is necessary because the contour of the country is such that if the water were delivered at a lower elevation it would not run on to the Lawson land.

5. That in the spring of 1915, against the objection and protest of the plaintiff and John L. Lawson, the defendant company lowered the level of the Northeast branch of said canal and the banks thereof and in lowering said canal a strata of sand was encountered which caused a large loss of water through seepage. By reason of the lowering of the banks of the canal it was necessary for the canal to be full to the top of the banks in order for the plaintiff to secure water with which to irrigate his lands, and then it would not supply the full quota to which the plaintiff and John L. Lawson were entitled.

6. That the general course of the North Point Canal is North and there is a lateral known as the Northwest branch which diverts water from the said North Point Canal before water flowing in said canal would reach the Northeast branch, and as the said canals, headgates and intakes were originally constructed there was a headgate across the intake of the Northwest canal which controlled and regulated the flow of water therein, and which was so constructed as to permit the portion to which the Northeast branch was entitled to flow by and not to permit the said Northwest branch to take all the waters of the said North Point Canal. That the defendant company, in order to more easily divert a larger proportion of the water to the Northwest branch, and deprive the Northeast branch of its quota, took out said headgate at the intake of the Northwest branch and constructed what was known as the Jachetta Gate across the Northeast branch, which obstructed the flow of the water in the Northeast branch and caused it to back up and thereby caused a large portion of the water to which the Northeast branch was entitled to flow into the Northwest branch.

7. That the defendant company during the irrigating seasons between 1918 and 1922, inclusive, negligently failed to keep its said canal, and especially the Northeast branch thereof, in good

operating condition and failed and neglected to keep it free from moss, weeds and obstructions, and wrongfully placed therein the said Jachetta Gate, which in itself served as a dam obstructing the flow of the water in the Northeast branch and also causing moss, weeds and debris to collect and form a dam, keeping the waters from flowing into the Northeast branch from which this plaintiff diverts his water and causing the same to flow in the Northwest branch."

#### NAMES OF DIRECTORS DURING 1915-1923

##### 1915

J. H. Bailey	Thos. E. Jeremy
I. G. Meyer	Henry Cohn
T. W. Partridge	Aug. Treppman
Glenn R. Bothwell	Joseph Hanson
Solomon Nelson	

##### 1916

A. F. Lawson, (President)	Thos. W. Partridge
Glenn R. Bothwell	Ethan J. Jeremy
James A. Brown	J. D. Crossman
C. Wesley Brown	Thos. E. Jeremy
Geo. D. Parkinson	

In the fall of 1916 the Articles of Incorporation were amended so as to provide for five directors instead of nine.

##### 1917

A. F. Lawson, (President)	C. W. Brown
Chas. T. Neale	E. J. Jeremy
Thos. W. Partridge	

##### 1918

W. E. Hubbard	John H. Bailey
Geo. D. Parkinson	Ethan J. Jeremy
Thos. W. Partridge	

##### 1919

John H. Bailey	W. E. Hubbard
Ethan J. Jeremy	C. E. Dodge
Thos W. Partridge	

##### 1920

John H. Bailey	John W. Lawson
C. E. Dodge	W. E. Hubbard
Thos. W. Partridge	

##### 1921 (To June 9th)

Forest D. Lowry	E. J. Jeremy
John L. Lawson	C. E. Dodge
Frank J. Gustin	

	1921 (After June 9th)	
B. S. Hinckley		John L. Lawson
Thos. E. Jeremy		Ethan J. Jeremy
Sylvester Q. Cannon		
	1922	
B. S. Hinckley		Thos. E. Jeremy
Ethan J. Jeremy		Sylvester Q. Cannon
C. W. Brown		
	1923	
B. S. Hinckley		Thos. E. Jeremy
Ethan J. Jeremy		C. W. Brown
Matthew Baer		

May 5, 1923, A. A. Hinckley elected to fill the place of M. Baer, deceased.

#### \$91,000.00 IN ASSESSMENTS PAID

During the years 1914-1923, there has been paid in by stockholders by way of assessments a total of more than \$91,000.00, the money having been used in the enlarging of the canal to a capacity of 100 second feet, cementing of the Peterson Fill, construction of diverting dams in the surplus canal, maintenance, etc.

During the past ten years the total amount that Lawson et al. have paid by way of assessments, does not amount to more than to wit:

A. F. Lawson and John L. Lawson .....	\$ 700.00
J. W. Kilgrow .....	343.00
J. L. Dobson .....	205.00
S. A. Thomas .....	348.00
	<u>\$1596.00</u>

And during said time the company has paid Lawson et al. for their services in connection with the canal, to wit:

John L. Lawson .....	\$ 650.00
A. F. Lawson .....	457.55
S. A. Thomas .....	235.00
John W. Kilgrow .....	32.00
	<u>\$1374.55</u>

The greatest amount of land cultivated to crop by Lawson et al. at any time during the past ten years, according to the writer's best information, and which is believed to be correct is, to wit:

A. F. Lawson and John L. Lawson .....	31.17 acres
John W. Kilgrow .....	26.45 acres
J. L. Dobson .....	29.41 acres
S. A. Thomas .....	56.88 acres
Total area .....	<u>143.91 acres</u>



It will be observed that the \$8,128.18 which the Lawsons claim in their complaint should be paid to them by the company as damages, amounts to \$260.76 per acre, or \$52.00 per acre for each of the five years in their complaint mentioned.

As indicated by the Lawson et al. complaint, \$52.00 per acre profit each year represents only a part of their profit derived from the respective tracts of cultivated land since it is not claimed by them that they raised no crops or received no water.

What they say in their complaint is:

"9. That by reason of the acts as herein set out, of defendant, the amount of water received by the plaintiff from the defendant during the years 1918 to 1922, both inclusive, was greatly diminished, with the result that the crops of various kinds of the plaintiffs, which were planted upon the lands which are tributary to the defendant's canal, were greatly lessened and impaired and the value of the various crops of the plaintiff was lessened and the plaintiff suffered damages by reason thereof."

That the Lawsons would have you believe their land is capable of large earnings is also implied by the allegation in the complaint as to the year 1919, wherein it is alleged they were damaged because of lack of water to the extent of \$5,008.39, i. e., \$160.00 per acre. (See Exhibit "D").

It may not be amiss to call the reader's attention to the fact that the records in the auditor's office show that said land belonging to A. F. and J. L. Lawson was for the purposes of State and County taxes for the year 1923, assessed at a valuation of \$800.00 and that Lawson appeared before the Board of Equalization and had the assessed valuation reduced from \$800.00 to \$300.00 valuation, i. e., less than \$10.00 per acre. Yet this is the land in regard to which the Lawsons are seeking to recover from the company a judgment for \$8,128.18 for diminished productive capacity. So far as known to the writer there is no complaint on the part of Lawsons et al. because of not having all the water they desired during the present year.

The laws of Utah provide, to wit:

SEC. 5866. CASH VALUE. LAND AND IMPROVEMENTS SEPARATELY. All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.

Sec. 5876. \* \* \* The intent of the last two provisions is to require assessors to acquire as full knowledge as possible of the property that should be entered upon the assessment roll in their respective counties, so that all property shall be assessed and bear its share of the burden of taxation.

### THE RECORDS SHOW

The records show in relation to the holdings of the respective plaintiffs that for the year 1923 their property was for purposes of taxation, valued as follows, to wit:

A. F. LAWSON & J. L. LAWSON		
36.8 acres....	Real Estate .....	\$ 300.00
	Improvements .....	300.00
	Personal Property .....	210.00
		<u>\$ 810.00</u>
J. W. KILGROW		
51. acres....	Real Estate .....	\$ 875.00
	Improvements .....	600.00
	Personal Property .....	175.00
		<u>\$1,650.00</u>
J. L. DOBSON		
59.62 acres....	Real Estate .....	\$1,285.00
	Improvements .....	300.00
	Personal Property .....	335.00
		<u>\$1,920.00</u>
ALBERT THOMAS (S. A. Thomas)		
53.83 acres....	Real Estate .....	\$1,000.00
	Improvements .....	750.00
	Personal Property .....	360.00
		<u>\$2,110.00</u>

Exhibit "B" on pages 19 and 20 hereof, to which the reader's attention is invited, it is believed will tend to show that Lawson really controlled the right to the use of more water than he had use for.

### A WORD PICTURE

On the 18th day of October, 1922, a hearing relating to a proposed drainage district to be known as Salt Lake County Drainage District No. 2, was had before the Board of County Commissioners. A. F. Lawson was a witness at said hearing and testified under oath, among other things, as follows, to wit:

- Q. Mr. Lawson, state your full name, please.  
A. A. F. Lawson.  
Q. Where do you reside?  
A. North Point.  
Q. Within the boundaries of this contemplated drainage district?  
A. Yes, sir.

Q. What is your business, Mr. Lawson?

A. Farming.

\* \* \* \*

Q. Mr. Lawson, you own land within the proposed Salt Lake County Drainage District, do you not?

A. Yes, sir.

Q. Where is that land?

A. Northeast quarter of 21, 1 North 1 West.

\* \* \* \*

Q. Some of your land is high, is it, and some of it low?

A. Yes, about eight acres, about eight or nine acres on the north side of it is high, and the same elevation as the flat generally up there.

Q. You have an orchard on your place, Mr. Lawson?

A. I did have up until about two months ago, and it died because the water stood all over the ground that it was in.

Q. Mr. Lawson, have you observed any effects from irrigation of lands adjacent to you which are higher than your lands?

A. Well, Mr. Nebeker has an 80 just west of me slightly higher; that is, it slopes to the east and I am a little farther east so he would be naturally slightly higher than I am.

Q. What effect, if any, have you observed on your own land which was created by the irrigation of lands higher above?

A. When he commenced irrigating there on his land on the west, I had a fine stand of clover on the west side of my land, about two acres, from which that year I had taken off seven hundred and fifty pounds of clover seed which I sold for one hundred and forty odd dollars, something like seventy or seventy-five dollars an acre; got twenty cents a pound for it. After he had irrigated upon his land there next to his west fence a quarter of a mile away where his pasture runs up there, I find that in a few days, all the way from three to five days, depending upon the season as to late or early, the water from that west fence of his where he irrigated that land there for his pasture and other purposes runs down through his ground for that quarter of a mile, comes down in this barrow pit along here on the west side of my land and on the east side of his, then runs, through underneath the road, because the road is a sandy bottom, the same as all that country has a sandy bottom, runs underneath here and has killed that clover entirely out by the alkalil that has been brought down by the water that he has been putting on his land to irrigate that.

\* \* \* \*

Q. \* \* How much land do you own over there?

A. My brother and I own forty acres.



Q. Forty acres?

A. Yes, sir.

Q. Are you and your brother married, either of you?

A. No, sir.

Q. You haven't any family?

A. No, sir.

Q. Neither of you?

A. No, sir.

Q. How long have you lived over there?

A. About fourteen years now.

Q. About fourteen years?

A. Yes, sir. We have been working on the place about two years more than that.

Q. How much of your land lies in what they call the low area?

A. About between twenty-five and thirty acres.

Q. Then the remaining is on what is called the higher ground?

A. Yes, sir.

Q. Were you able to make a living on that ground until recent years?

A. Well, all the money we have made in recent years we have not made there, but there can be a fine living made there all right.

Q. How recently have conditions arisen which have prevented you from properly handling your ground?

A. How recently?

Q. Yes.

A. Well, in the last fourteen years about three times the water has come up and interfered with the handling of the lower ground, and this year it came up more than any other time, so much so it ran over our place there, all the bottom land, and killed our orchard, and when we stepped out of the house we stepped in the water.

Q. With the exception of those three years you have been able to handle your land efficiently and properly, have you?

A. Well, we have been working there on it more or less during that time.

Q. Have you been able to handle it efficiently and without interference except during those three years when you were flooded?

A. Not altogether, because the high lands on the west would bring more or less alkali down on us down there and we had to be fighting that; and in the first place when we started farming there we couldn't do much with the bottoms until we got the county to build a road over there, and in building the road they made ditches between the land and the top of the road, and then we had a chance to drain the bottom land into that ditch, and since then we have been getting along all right.

Q. And you have had no trouble since you got that ditch?

A. Practically no trouble.

Q. Except when you had high flood water?

A. Yes.

\* \* \* \*

Q. Will your high lands drain into your low lands?

A. Yes, sir.

Q. You say you have about forty acres in all, and have twenty-seven acres of low land and about thirteen acres of high land?

A. Not that much.

Q. How much?

A. Six to eight acres of high land.

Q. Six to eight acres of high land?

A. Yes.

The complaint of Lawson, et al., against the North Point Consolidated Irrigation Company was filed with the Clerk of the District Court on December 1, 1922, approximately forty-two days after A. F. Lawson had testified before the Board of County Commissioners, as above quoted. Later, to wit: on July 25, 1923, Lawson et al. amended their complaint so that same now reads as quoted from on pages 3 and 4 and last paragraph on page 6 of this letter.

Under the title of "APPENDIX" there is attached to this letter what may be termed another "word picture." (Pages 22 and 29 hereof.)

## HISTORY

It is well known to most of you gentlemen who are stockholders in the company, that when your present largest stockholder first became interested about the year 1915, the assets of the company consisted of a dilapidated canal, a dilapidated diverting dam in the surplus canal, muskrats continually burrowing in and causing trouble to that part of the canal known as the Peterson Fill, all of the holdings of the company encumbered by a mortgage of \$15,000, then many years past due, and nothing of record to show that the company was entitled to the use of any stated amount of water.

Since your largest stockholder became interested the Peterson Fill has been cemented, the canal enlarged, and its banks widened and thereby strengthened, a substantial diverting dam constructed in the surplus canal, after two dams previously constructed at large expense during said time had been by reason of high waters washed out and destroyed. The \$15,000.00 mortgage has been paid off in full. And further, your largest stockholder has initiated as shown by Exhibit "A"

herewith, the necessary proceedings looking toward the securing to the company of a recorded right to the use of the water for the purpose of irrigation.

During all of said years the Lawsons and their neighbors are the only people who have benefitted by the use of water from the company's canal for irrigation purposes, and their use has been limited to the irrigation of not more than 500 acres of cultivated land, all told.

### CONCLUSION

The company's right to the use of 100 second feet of water, the present carrying capacity of its canal, for purposes of irrigation between April 1st and September 30th of each year, is dependent upon the water being applied to a beneficial use within the time allotted by the State Engineer (See Exhibit "A"). Hence it can be readily understood that it was to the company's best interests and to the best interests of every stockholder to have as much water as possible from the company's canal applied to a beneficial use, i. e., irrigation.

None of the stockholders, so far as known to the writer, ever contemplated profiting by way of the company selling water rights, but on the contrary the stockholders were and are respective owners of tracts of land capable of being irrigated from the company's canal. Such lands, however, it is generally recognized, must be tile drained before being capable of producing profitable agricultural crops.

Your largest stockholder was the first among you to commence tile drainage and as you know, he has expended several hundred thousand dollars of his own money in tile draining about one-half of his approximate 6,000 acres. Unfortunately, however, when his reclamation plans were about half completed some three years ago, his health failed to the extent that he has been unable for the past three years to leave his home in Kansas City, and as a result, the work on his project stopped. He has, however, during the said three years, continued to contribute by way of paying canal assessments to the extent of, to wit:

February 22, 1921 .....	\$ 6,232.50
May 9, 1921 .....	3,126.75
July 12, 1921 .....	3,752.70
December 3, 1921 .....	3,757.05
May 6, 1922 .....	2,504.70
September 15, 1922 .....	6,261.75
January 13, 1923 .....	3,757.05
	<hr/>
	\$29,392.50

which is included in the approximately two-thirds of the more than \$91,000.00 referred to on page 7 of this letter, and Lawsons and their kind



associates, who during said time have been the beneficiaries as users of water from the canal for purposes of irrigation, now start a suit with the aim of collecting from the company \$26,409.18, and in case of their obtaining judgment, the payment of two-thirds of the amount would fall upon their erstwhile benefactor, should he elect to continue to hold his interest in the company.

In other words, if Lawson, et al. were to succeed in obtaining a judgment against the North Point Consolidated Irrigation Company for \$26,409.18, and an assessment should be levied against the stockholders in proportion to their stockholdings for the purpose of raising the money to pay off the judgment, your principal stockholder would be assessed in the premises to the extent of more than \$17,000.00.

Encouraging, is it not, to a comparative stranger who has evidenced his confidence in our resources by expending so generously of his own funds in an undertaking that, if successful, would tend to benefit directly or indirectly, every taxpayer in Salt Lake County.

Do not for one moment, gentlemen, believe there is any intention on the part of the writer to cast any uncalled for reflection upon Lawson et al.; that they seek to be eminently just and fair in the premises, is most convincingly shown by the close figuring into dollars and cents of the amount they claim as damages. When I say cents, I refer to the eighteen cents, i. e., \$26,409.18.

*Portia:* I pray you, let me look upon the bond.

*Shylock:* Here 't is, most reverend doctor, here it is.

*Portia:* Shylock, there's thrice thy money offer'd thee.

*Shylock:* An oath, an oath, I have an oath in heaven;

Shall I lay perjury upon my soul?

No, not for Venice.

*Portia:* Why, this bond is forfeit;

And lawfully by this the Jew may claim

A pound of flesh, to be by him cut off

Nearest the merchant's heart.

—Be merciful!"

The personal views of the writer are that the pending suit brought by Lawson and his associates should be crowded to trial at the earliest possible date. The company should spare no expense necessary to the employment of competent counsel and competent engineers and all obtainable witnesses familiar with the facts. If after the necessary court proceedings it shall perchance be finally determined that the business of the North Point Consolidated Irrigation Company cannot be conducted in any manner contrary to the wishes and whims of Lawson et al., then and in that event I suggest they be made a present of the company and

its holdings, and thus the erstwhile good fellow stockholder will escape the payment of further assessments. If the Lawsons can successfully maintain their present suit they can of course repeat it year after year.

Of what value is stock in the company? Of what value will any of the stock be if the water supplying the company's canal is not placed to a beneficial use, i. e., irrigation within the time allotted by the State Engineer?

Why waste any more money by way of paying assessments in order that the Lawsons may use the company's canal as a reservoir to boost the water high enough so that they can skim off the top and irrigate their highest land by gravity and thus save the cost to them of a comparatively small pumping contrivance such as one of their more magnanimous neighbors has in successful operation, and at the same time furnish them ammunition with which to start going other law suits in anticipation of collecting from \$50.00 to \$160.00 per acre profit per year by way of alleged damages?

Respectfully submitted,

Diet. EWS.

E. W. SENIOR

EXHIBIT "A"

On October 5, 1915, the application of U. S. Epperson to appropriate 100 second feet of water from the Jordan River for irrigation purposes between April 1st and September 30th of each year was granted by the State Engineer, conditioned upon, to wit:

(a) This application is approved on condition and it is hereby required that actual construction work shall begin within six months and be fully completed by June 1, 1918.

(b) And that the water, the right to the use of which is herein sought, shall be applied to the beneficial use set forth by June 1, 1918.

The law provides, to wit: (Page 193, Laws of 1919).

"Sec. 52. Requirements to be endorsed on applications. \* \* \* prosecution of work \* \* \* In his endorsement of approval on any application, the State Engineer shall require that actual construction work must begin within six months from the date of such approval, and shall state the time within which the construction work shall be completed, and the time within which the water shall be applied to beneficial use. \* \* \* The construction of the work shall be diligently prosecuted to completion and the water applied to beneficial use, within the time fixed by the State Engineer, not exceeding fourteen years from the date of the approval of the application; \* \* \* "

IN RE EXTENSION OF TIME, the following copies of letters from the State Engineer may serve to refresh your memory and also aid by way of indicating the present status of the water right in question,

May 17, 1918

Mr. U. S. Epperson  
In care of E. W. Senior, Attorney  
330 Judge Building, City

STATUS OF APPLICATION 5959

Dear Sir:

You are hereby informed that your request for an extension of time within which proof of appropriation may be submitted in the matter of Application 5959 has been considered and granted. The time has been extended to June 1, 1920.

Respectfully yours,

G. F. MCGONAGLE  
State Engineer  
By C. J. U.

CJU|M



OFFICE OF  
STATE ENGINEER

Salt Lake City, Utah, March 31st, 1920

Mr. U. S. Epperson  
330 Judge Building, City

The proof of Appropriation, as contemplated by application File No. 5959 will be due June 1st, 1920.

This proof together with the maps, profiles and drawings required therefor, and the proper fees must be received in this office on or before the date when said proof becomes due or the application will lapse. If the application is late or reinstated, by submitting said proof its priority of right will be determined from the date when said proof is submitted and not from the date when the application was first received. (See Sections 55 and 56 Chapter 67 Sessions Laws of Utah, 1919).

If you are not able to make proof within the time allowed and still wish to keep the application in good standing, request an extension of time. Such a request must be made in affidavit form, accompanied with a fee of \$1.00, and received in this office on or before the date when the aforesaid proof is due. The affidavit must set forth in addition to the time when the application was approved and the time when work was commenced, good and sufficient reasons why an extension of time should be granted, stating among other things the amount of work done to date and its approximate cost, also the amount of work remaining to be done and its estimated cost.

Very truly yours,

G. F. MCGONAGLE  
State Engineer

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OFFICE OF  
G. F. MCGONAGLE, State Engineer

Salt Lake City, Utah, May 13, 1920

Mr. U. S. Epperson  
330 Judge Building, City

RE: APPLICATION 5959

Dear Sir:

Your affidavit for an extension of time has been considered with respect to Application 5959, and until June 1, 1922, has been granted within which proof of appropriation of the water involved may be submitted.

Very truly yours,

G. F. MCGONAGLE  
State Engineer

### ASSIGNMENT

The undersigned, U. S. Epperson, for and in consideration of One Dollar and other valuable considerations, does hereby transfer, set over and assign to the North Point Consolidated Irrigation Company, a Utah corporation, all of his right, claim and interest in and to that certain application to appropriate water, designated in the office of the State Engineer at Salt Lake City, Utah, as File No. 5959, and of record in Book 18 of Application to Appropriate Water, at pages 78-79 to 80, which said application was approved by the State Engineer on October 5, 1915.

WITNESS his hand this 21st day of January, 1922.

U. S. EPPERSON.

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THE STATE OF UTAH  
OFFICE OF THE STATE ENGINEER  
SALT LAKE CITY

May 23, 1922

Mr. C. J. Ullrich,  
603 Deseret Bank Bldg., City

Re: Application No. 5959

Dear Sir:

Proof of completion of works in the matter of application No. 5959, of the North Point Consolidated Irrigation Company, has been received in this office and examined. This proof is in proper form, has been accepted and the records of the State Engineer have been so marked.

Very truly yours,

R. E. CALDWELL, State Engineer,  
By Lloyd Garrison, Deputy.

LG BD

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THE STATE OF UTAH  
OFFICE OF THE STATE ENGINEER  
SALT LAKE CITY

May 31, 1922

Mr. B. S. Hinckley, Pres.,  
North Point Consolidated Irr. Co.  
330 Judge Bldg., City

Re: Application No. 5959

Dear Sir:

Your affidavit requesting an extension of time within which to submit proof of beneficial use in the matter of application No. 5959 has been considered and granted. The time has been extended to June 1, 1925.

Very truly yours,

R. E. CALDWELL, State Engineer,  
By Lloyd Garrison, Deputy.  
By AD

LG BD

The Law of Utah provides:

"Sec. 3. RIGHT TO THE USE. Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this State."

"Sec. 6. NON-USE—REAPPROPRIATION. When an appropriator or his successor in interest abandons or ceases to use water for a period of five years, the right ceases, and thereupon such water reverts to the public, and may be again appropriated, as provided in this Act." (Laws of 1919, page 178.)

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EXHIBIT "B"

NORTH POINT CON. IRRIGATION Co.  
326 Judge Building

Salt Lake City, Utah, April 27th, 1915

Mr. A. F. Lawson,  
P. O. Box 354, City

Dear Sir:

Your application dated April 20th, for 20 acres of water for the approaching irrigation season was received.

Confirming our conversation over the phone, if you will lower your branch so that water can be delivered to it you will be entitled to the amount of water you have applied for and for as much in addition to that as you may be able to use, without any charge. The Management of the Canal are anxious to encourage the use of their water as much as possible. The only stipulation they make in regard to this is that each applicant shall sign an application for the amount he wishes to use. I am preparing a book in which to enter names of applicants and am directed to request them to affix their signatures in same. I will therefore request that when you are next in town that you call at the office and sign this book, the purpose of which is to keep a record of the amount of water that has been used.

Yours very truly,

THOS. W. PARTRIDGE.

---

North Point, March 19th, 1920

To the North Point Consolidated Irrigation Company  
No. 331, Judge Building, Salt Lake City, Utah

Gentlemen:

The undersigned, A. F. Lawson and John L. Lawson, hereby apply for 32 acres of irrigation water for the season of 1920. Said water to be used out of the north east branch of the canal system.

Respectfully,

A. F. LAWSON

JOHN L. LAWSON

North Point, March 19th, 1920

To the North Point Consolidated Irrigation Canal Company,  
No. 331, Judge Building, Salt Lake City, Utah

Gentlemen:

The undersigned hereby apply for 40 acres of irrigation water for the season of 1920. Said water is to be used out of the north east branch of the canal system. I have arranged with A. F. and John L. Lawson to use 40 shares of their canal stock to cover this application. Some of their water stock was used on my land last year and other years and of which fact your water master was told.

Respectfully,

JOE BEGHETTI

By A. F. LAWSON  
Attorney in fact.

---

North Point, Salt Lake County, Utah  
April 10th, 1921

North Point Consolidated Irrigation Co.  
331 Judge Building, Salt Lake City, Utah

Gentlemen:

I hereby apply for 40 acres of irrigation water to be used on my land in Sec. 21, 1 N. 1 W. S. L. M. for the season of 1921. I have arranged to use 40 shares of water stock belonging to John L. Lawson and A. F. Lawson.

Respectfully,

JOSEPH BEGHETTI,

By A. F. LAWSON  
Atty in fact.

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North Point, Salt Lake County, Utah  
April 10th, 1921

The North Point Consolidated Irrigation Co.  
No. 331, Judge Building, Salt Lake City, Utah

Gentlemen:

We hereby apply for 35 acres of irrigation water to be used on our land in Sec. 21, 1 N. 1 W. S. L. M. for the season of 1921.

Respectfully,

JOHN L. LAWSON  
A. F. LAWSON



EXHIBIT "C"  
THE YEAR 1918

On pages 106-107 of the Minute Book of the North Point Consolidated Irrigation Company, we find it stated, to wit:

July 6, 1918. Secretary called attention that on May 21, 1918, the Surplus Dam went out, and on following day President Bailey appointed T. E. Jeremy and A. F. Lawson to make arrangements with the Brighton & N. P. Canal Co. to obtain the amount of water from its canal due under its 232 shares, and to perform such work at the junction of the canals as might be necessary, etc., to get the water.

Whereupon moved and seconded that Mr. Lawson be notified to discontinue his work on the canal during the period of shut down of the Brighton Canal, and in the interval before the water was again delivered the Board would decide upon the selection of a water-master for the remainder of the irrigation season.

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EXHIBIT "D"  
THE YEAR 1919

At page 128 of the Company's Minute Book, we find it stated, to wit:

June 26, 1919. Moved that Company pay Mr. (S. A.) Thomas \$15 per week to perform following services: To see to it that the Company obtains all the water to which it is entitled from the B. & N. P. Canal Co., to keep the company's canal in condition to carry this water; but to make no changes in the canal without the written authority of the Board; also to watch the Peterson Fill and see to it that the water does not raise to a point which will endanger the fill and cause it to leak. Employment to begin June 28, 1919.

S. A. Thomas given certain assistance of men and teams to help clean the canal.

S. A. Thomas paid as watermaster to August 28, 1919.

S. A. Thomas paid as watermaster to September 11, 1919.

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EXHIBIT "E"  
THE YEAR 1921

At page 228 of the Minute Book of the North Point Consolidated Irrigation Company we find it stated:

July 12, 1921. It was announced by Mr. Lawson and Mr. Thos. E. Jeremy that Mr. John L. Lawson would hereafter act as watermaster in place of Mr. Thomas Cracroft and at the same salary of \$125.00 per month.

## APPENDIX

On September 10, 1920, there was filed with the Clerk of the Third Judicial District Court, in and for Salt Lake County, Utah, two complaints. One of said complaints is entitled, to wit:

JOHN L. LAWSON AND A. F. LAWSON,	} Complaint 29069
vs.	
JAMES H. ANDERSON, administrator of the Es- tate of NIC PERAN, deceased, LEWIS PERAN, JOHN PERAN, AND STEVE DOULEGARIS,	
Plaintiffs, Defendants,	

And the other of said complaints is entitled, to wit:

JOHN L. LAWSON AND A. F. LAWSON,	} Complaint 29070
vs.	
C. F. GILLMOR, ED. GILLMOR, RALPH D. GILL- MOR AND STEPHEN GILLMOR,	
Plaintiffs, Defendants,	

Both of said complaints are subscribed and sworn to by A. F. Lawson. In each of the complaints, among other things it is alleged, to wit:

"2. That the plaintiffs do now and at all times hereinafter mentioned did secure water for irrigating the above described tract of land by means of an irrigating ditch or canal owned by them, the said canal and right of way for the same owned by the plaintiffs, runs from a canal of the North Point Consolidated Irrigation Company to the property above described. \* \* \* "

In complaint No. 29070, among other things it is alleged, to wit:

"1. For a third cause of action against the defendants the plaintiffs restates and makes a part hereof paragraphs one, two and three of the first cause of action.

2. That by reason of the said defendants wrongfully permitting their sheep, from August 29, 1917, to the date of filing this action (September 10, 1920) to trample down the banks of the said irrigation ditch, they have trampled down the sides of said banks and filled the bottom of said ditch with dirt and debris so that it is now necessary to clean said ditch in order that it will carry



water for the next irrigation season, to the plaintiffs' damage in the sum of five hundred dollars (\$500).

3. That other parties, namely, James H. Anderson, administrator of the Estate of Nick Peran, Lewis Peran, John Peran and Steve Doulegaris have, during the times herein mentioned leased a tract of land through which said ditch runs, and through which these plaintiffs have an easement for the maintenance and operation of said ditch and that they permitted cattle to run on and graze on and in said ditch, and said cattle have also trampled down the sides of said ditch and caused the same to fall in and fill up the bottom thereof, and one-half of the said damages has been caused by These defendants and one-half of the cattle of the persons above named.

4. That the said wrongful conduct of the defendants in permitting their sheep to trample down the banks of the said irrigation ditch was continuous, that is, for a period of four to six months each year and it is constantly recurring, and the said defendants and each of them threaten and give out that they will continue to allow said animals to trample down the banks of said ditch."

Said case No. 29070 came on for trial before the District Court on or about February 1, 1921, at which time A. F. Lawson testified under oath, among other things, as follows, to wit:

Q. You may state your name.

A. A. F. Lawson.

Q. Mr. Lawson, you are one of the plaintiffs in this case?

A. Yes, sir.

Q. And the other plaintiff, John L. Lawson, is your brother?

A. He is.

Q. And where do you reside?

A. North Point in this county.

Q. Mr. Lawson, the land which is described in the complaint, you and your brother have owned some years?

A. Many years, yes.

Q. And for many years have you been living on it and farming it?

A. Well, my brother and I have been living there about fourteen years. It was started to be put in farm condition a little before that, but we have been living there fourteen years.

Q. Mr. Lawson, during that time have you used the canal which is described in the complaint or a part of the time anyway?

A. The ditch or the company canal?

Q. Well, the ditch.

A. The Lawson ditch, yes, we have been using that all the time that it was in a position to use.

Q. And that is the ditch, description of which is given in the  
A. They would slide down the bank and slide dirt into the  
complaint, is it not?

A. Yes, sir.

\* \* \* \*

Q. So from this number (of sheep) which you mentioned,  
somewheres between 1500 and 2200 ranged around in that vicinity  
of this canal from about the first of November to about the middle  
of May?

\* \* \* \*

A. Yes, they have been herding and grazing on both sides of  
that ditch there.

Q. Now, what years do you mean that?

A. In '16, '17, '18 and '19 and '20.

\* \* \* \*

upon the ditch by being upon it?

Q. Now, then, just tell us how, what, if any, effect they had  
bottom of the ditch. In that way narrow the ditch and raise the  
bottom of it up.

\* \* \* \*

Q. Did the sheep have any other place for water than this  
ditch?

A. They could have gone to the company canal up there.

MR. STEWART: You mean the North Point Canal, do you?

MR. SANFORD: That is what he pointed to.

Q. No other place?

A. I don't know of any in that section of the country.

Q. In general then where did they water during that time from  
your observation?

A. They would either go to the company canal, or if there was  
water in my ditch they would water there.

Q. State whether or not there was water in your ditch.

A. Not always. I tried to keep it as near dry as I could because  
of the damage that was being done to it by animals going into it  
when it was wet but frequently they opened this gate and let water  
go into it when I didn't want it to.

\* \* \* \*

Q. Had the sheep been on there from 1913 or '14.

A. They had.

Q. Every year on down?

A. They have ever since I have been over there, fourteen years.

\* \* \* \*

Q. Mr. Lawson, how many years experience have you had in farming?

A. About twenty-five years.

Q. And that field of alfalfa (15 acres), how would you classify it?

A. As good as any in the state. Fourteen years of that time I have been over there.

\* \* \* \*

Q. Mr. Lawson, since that time or during that time, that period of time which I have mentioned, August 29th, 1917, to the beginning of this action, state whether or not you have observed the Gillmor sheep along the right of way of this canal?

A. I have.

\* \* \* \*

Q. Have you ever seen them going into the ditch as you speak of?

A. Yes, sir.

Q. What did you observe then as you saw them go into the ditch?

A. As they go into the ditch on the one side they crowd the dirt in because the banks are sloping down and then when they climb up on the other side they claw the dirt down.

\* \* \* \*

Q. Mr. Lawson, during this time, state whether or not you have cleaned out the ditch every spring or fall?

A. Yes, sir, I have.

Q. And what has that consisted of? And when have you done it?

A. We make a general cleaning in the spring and along the middle of the summer, well, perhaps soon after the first of June. Why, that consists in taking the weeds out of it, and where dirt has been pushed in, so it be in lumps or ledges we take that out so as not to interfere with the water flowing too much. The country there is so extremely level, the first half mile is practically level. We have to be extremely careful with the ditch in order to make the water run through it at all. Unless it is smooth we can't irrigate satisfactorily.

Q. You say the first half mile. How was the whole ditch, the rest of it, the grade?

A. It has more grade in the first quarter of a mile east of the County Road, a little more grade than there is over there, but it is very slight.

Q. You have done no excavating, cleaning you term it, whatever since 1917?

A. Not the regular excavating by teams and scrapers and things like that—we go through it with a shovel and perhaps with a scraper to level off the ridges and knolls that have been worked up.

Q. Now, what is the present condition or the condition at the time the suit was filed, of the canal? (September 10, 1920.)

A. It is in a condition where it needs to be taken out and cleaned up, that is making an excavating.

Q. (By the Court): What you term an excavating cleaning?

A. Yes, sir.

Q. (By Mr. Sanford): Now, Mr. Lawson, did you make the examination of the ditch to determine how much work that would require to do that excavating cleaning?

A. Yes, sir.

Q. Tell us briefly what would have to be done in the way of work, how much filling has been in the ditch.

A. The ditch banks have been crowded in the first quarter of a mile, they have crowded so that the ditch is only three and one-fourth feet across the bottom on the level.

Q. And formerly how wide?

A. Seven feet. And in the last half a mile, the half mile running through the Tunnieliffe ground and company canal it averages four and a half feet on the level in the ditch, but that ditch bottom has been raised from six to eight inches.

Q. All along or just part of it?

A. Most of the way.

Q. Most of the way?

A. Most of the way. In fact the least raise in the bottom has been near the County Road where the herds crossed, that has been the least raised in the bottom.

Q. How much has that been?

A. About four inches.

Q. Four inches?

A. Yes.

Q. And figuring in that way did you make an estimate of the number of cubic yards of earth that would have to be removed to restore the ditch to its former condition?

A. I did.

Q. How many?

\* \* \* \*

Q. The cubic yards in that three quarters of a mile comprising the red lines there would be 1059 and that takes it to the Homes place, doesn't it?

A. It takes it to the Harris place.



Q. I mean the Harris place.

A. Not through the Harris place, but to the Harris place.

Q. And at the time of the beginning of the suit what would have been the reasonable value of the services in cleaning that ditch out and putting it in its normal condition?

\* \* \* \*

A. \$635.40.

Q. From the Harris ditch up to the company canal?

A. That three quarters of a mile commencing at the west fence of the Harris ground and running to the company canal three quarters of a mile.

Q. Mr. Lawson, during this entire period from the fall, well, from September first, 1916, down to the filing of the action, I will ask you if in addition to the sheep of the defendants, there have been any other animals going over and upon and into this canal?

A. Yes.

Q. And what other animals have you observed?

A. The Perran cattle, Perran and Doulegaris cattle.

Q. How many of them have you observed there at a time?

A. I have observed as many as a hundred head once there, and I have seen as many as seventy in the ditch at one time.

Q. What part of each year was the cattle ranging in the vicinity of that canal?

A. All the year.

Q. And state whether or not they frequent the canal more or less all the year?

A. They do.

Q. And do they get water from the canal?

A. Especially in the summer time. They cross it and re-cross it in the winter time.

Q. And you have been on the canal when these cattle have been there?

A. Yes, sir.

Q. State whether or not you have observed the cattle going in and out of the canal and standing in the canal.

A. I have.

Q. State whether or not you have observed the effect of the cattle going in and out of the canal upon the matters of filling the canal.

A. I have.

Q. How does that affect the canal?

A. The cattle crowds dirt down with their feet as they go in and push it down as they go out.

Q. Mr. Lawson, have you made observation and study as to the relative effect of the cattle and the sheep of the defendants upon this canal?

A. I have.

\* \* \* \*

Q. Well, you may just describe what you observed as to the effect upon the canal of a steer or one of the animals you have mentioned, cattle, going in and out of the canal.

A. I have noticed that when a steer or cow animal goes into the canal for the one trip they work more dirt into the ditch than sheep do going one trip.

THE COURT: That is, than one sheep?

A. Yes, but there being fully a hundred cattle and there being sometimes over 2000 sheep and judging from where the sheep has gone over the canal more regularly than the cattle and the amount of damage done there and where the cattle went more regularly, I came to the conclusion, considering the time that the cattle was there and number that went there all the time and the sheep only part of the year, that the average would be about the same for both flocks, the cattle and the sheep.

Q. That is, the cattle would contribute approximately fifty per cent and the sheep fifty per cent?

A. Yes, sir.

Q. Is that based upon careful observation and study of the effect of the cattle going in and the sheep going in?

A. It is from what I have studied there both spring and fall and summer.

Q. Now, Mr. Lawson, this matter was in court some four or five or six years ago, something like that.

A. In '15, in May, '15, and then we had a case, the same people and the same subject.

Q. Mr. Lawson, through the fact you are in court this way continuously, have you given special observation and study to those matters in order to determine those matters?

A. Yes, it has been rubbed into me more or less every month since that time.

Q. State whether that ditch is now (Feb. 1, 1921) in a condition where it requires a cleaning in order to carry water for the next irrigating season.

A. It does. There will be a small stream come through, but in order to irrigate properly, and within the time so to do the crops most good, it will have to be cleaned out to get water down in volume.



Case No. 29070, Lawson v. Gillmor, was decided in favor of the defendants. Yes, the Lawsons lost. The record shows, to wit:

"No. 29070 LAWSON vs. GILLMOR.

April 4, 1921 Filed findings and conclusions.

May 10, 1921 Filed notice of entry of judgment.

Dec. 3, 1921, Order denying new trial."

Case No. 29069, it seems, has been lying dormant for the past three years. The record relating thereto in the Clerk's office shows, to wit:

"No. 29069 LAWSON vs. JAS. H. ANDERSON, Admr. Peran Estate

Feb. 9, 1920 Complaint filed.

Nov. 18, 1920 Answer filed.

Jan. 28, 1921 Case assigned to Judge McCrea.

April 27, 1923 Filed consent and approval of Admr's account.  
Jan. 6, 1921 Served notice that on Jan. 7, 1921 plaintiff would ask to have case set for trial."

But so far as the record shows the case has never come to trial.















